

E-File: 4-13-09

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

THE RHODES COMPANIES, LLC, aka
"Rhodes Homes, et al.,¹

Debtors.

Case No.: BK-S-09-14814-LBR
(Jointly Administered)

Chapter 11

¹ The Debtors in these cases, along with their case numbers are: Heritage Land Company, LLC (Case No. 09-14778); The Rhodes Companies, LLC (Case No. 09-14814); Tribes Holdings, LLC (Case No. 09-14817); Apache Framing, LLC (Case No. 09-14818); Geronimo Plumbing LLC (Case No. 09-14820); Gung-Ho Concrete LLC (Case No. 09-14822); Bravo, Inc. (Case No. 09-14825); Elkhorn Partners, A Nevada Limited Partnership (Case No. 09-14828); Six Feathers Holdings, LLC (Case No. 09-14833); Elkhorn Investments, Inc. (Case No. 09-14837); Jarupa, LLC (Case No. 09-14839); Rhodes Realty, Inc. (Case No. 09-14841); C & J Holdings, Inc. (Case No. 09-14843); Rhodes Ranch General Partnership (Case No. 09-14844); Rhodes Design and Development Corporation (Case No. 09-14846); Parcel 20, LLC (Case No. 09-14848); Tuscany Acquisitions IV, LLC (Case No. 09-14849); Tuscany Acquisitions III, LLC (Case No. 09-14850); Tuscany Acquisitions II, LLC (Case No. 09-14852); Tuscany Acquisitions, LLC (Case No. 09-14853); Rhodes Ranch Golf Country Club, LLC (Case No. 09-14854); Overflow, LP (Case No. 09-14856); Wallboard, LP (Case No. 09-14858); Jackknife, LP (Case No. 09-14860); Batcave, LP (Case No. 09-14861); Chalkline, LP (Case No. 09-14862); Glynda, LP (Case No. 09-14865); Tick, LP (Case No. 09-14866); Rhodes Arizona Properties, LLC (Case No. 09-14868); Rhodes Homes Arizona, L.L.C. (Case No. 09-14882); Tuscany Golf Country Club, LLC (Case No. 09-14884); and Pinnacle Grading, LLC (Case No. 09-14887).

Affects:

☒
☐

All Debtors

Affects the following Debtor(s)

Hearing Date:

Hearing Time:

Courtroom 1

NOTICE OF ENTRY OF ORDER

TO: ALL INTERESTED PARTIES:

YOU ARE HEREBY NOTICED that the *Stipulated Interim Order (I) Authorizing Limited Use of Cash Collateral Pursuant to Sections 105, 361, 362, and 363 of the Bankruptcy Code, (II) Granting Adequate Protection and Super Priority Administrative Expense Priority to Prepetition Secured Lenders, and (III) Scheduling a Final Hearing*, was entered on April 10, 2009 in related Case No. 09-14778-LBR, Heritage Land Company, LLC. A copy of the Order is attached hereto.

DATED this 13 day of April, 2009.

LARSON & STEPHENS

/s/ Zachariah Larson, Esq.

Zachariah Larson, Bar No. 7787

Kyle O. Stephens, Bar No. 7928

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Notice of the hearing shall also be given to those entities claiming liens on collateral in which the First Lien Lenders have a security interest.

Entered on Docket
April 10, 2009

Hon. Linda B. Riegler
United States Bankruptcy Judge

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LOS ANGELES, CALIFORNIA

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[Proposed] Attorneys for Debtors and
Debtors in Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In re

THE RHODES COMPANIES, LLC, aka "Rhodes
Homes", et al.,¹

Debtors.

Case No. 09-14814-LBR
(Jointly Administered)

Chapter 11

DATE: 4-8-2009
TIME: 3:00 PM
Courtroom No. 1

¹ The Debtors in these cases, along with their case numbers are: Apache Framing, LLC (Case No. 09-14818); Batcave, LP (Case No. 09-14861); Bravo, Inc. (Case No. 09-14825); C & J Holdings, Inc. (Case No. 09-14843); Chalkline, LP

1 Affects:

2 ☒

3 ☐

All Debtors

Affects the following Debtor(s):

4 **STIPULATED INTERIM ORDER (I) AUTHORIZING LIMITED**
 5 **USE OF CASH COLLATERAL PURSUANT TO SECTIONS 105, 361, 362 AND 363 OF**
 6 **THE BANKRUPTCY CODE, (II) GRANTING ADEQUATE PROTECTION AND**
 7 **SUPER PRIORITY ADMINISTRATIVE EXPENSE PRIORITY TO PREPETITION**
 8 **SECURED LENDERS, AND (III) SCHEDULING A FINAL HEARING**

9 Upon the motion dated April 1, 2009 of the above captioned debtors and debtors in
 10 possession (collectively, the "*Debtors*") for Interim and Final Orders Pursuant to Sections 105, 361,
 11 362, 363 and 364 of the Bankruptcy Code (A) Authorizing Debtors to Use Cash Collateral, (B)
 12 Granting Adequate Protection to the Debtors' Prepetition Secured Parties and (C) Scheduling a Final
 13 Hearing (the "*Motion*"); and the Court having considered the Motion; and an interim hearing to
 14 consider approval of the Motion having been held and concluded on April 7, 2009 (the "*Interim*
 15 *Hearing*"); and after due deliberation and consideration and good and sufficient cause appearing
 16 therefore:

17 **THE COURT HEREBY FINDS:**

18 A. Petition Date. On March 31, 2009 or April 1, 2009 (as applicable, the "*Petition*
 19 *Date*"), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the
 20 United States Code (the "*Bankruptcy Code*"). Each Debtor is continuing in the management and
 21 possession of its business and properties as a debtor in possession pursuant to sections 1107

22
 23 (Case No. 09-14862); Elkhorn Investments, Inc. (Case No. 09-14837); Elkhorn Partners, A Nevada Limited Partnership
 24 (Case No. 09-14828); Geronimo Plumbing LLC (Case No. 09-14820); Glynda, LP (Case No. 09-14865); Gung-Ho
 25 Concrete LLC (Case No. 09-14822); Heritage Land Company, LLC (Case No. 09-14778); Jackknife, LP (Case No. 09-
 26 14860); Jarupa, LLC (Case No. 09-14839); Overflow, LP (Case No. 09-14856); Parcel 20, LLC (Case No. 09-14848);
 27 Pinnacle Grading, LLC (Case No. 09-14887); Rhodes Arizona Properties, LLC (Case No. 09-14868); Rhodes Homes
 28 Arizona, L.L.C. (Case No. 09-14882); Rhodes Design and Development Corporation (Case No. 09-14846); Rhodes
 Ranch General Partnership (Case No. 09-14844); Rhodes Ranch Golf Country Club, LLC (Case No. 09-14854); Rhodes
 Realty, Inc. (Case No. 09-14841); The Rhodes Companies, LLC (Case No. 09-14814); Six Feathers Holdings, LLC
 (Case No. 09-14833); Tick, LP (Case No. 09-14866); Tribes Holdings, LLC (Case No. 09-14817); Tuscany
 Acquisitions, LLC (Case No. 09-14853); Tuscany Acquisitions II, LLC (Case No. 09-14852); Tuscany Acquisitions III,
 LLC (Case No. 09-14850); Tuscany Acquisitions IV, LLC (Case No. 09-14849); Tuscany Golf Country Club, LLC
 (Case No. 09-14884) and Wallboard, LP (Case No. 09-14858)

1 and 1108 of the Bankruptcy Code.

2 B. Jurisdiction. Consideration of the Motion constitutes a "core proceeding" as defined
3 in 28 U.S.C. §§ 157(b)(2)(A), (D), (G), (K), (M) and (O). This Court has jurisdiction over this
4 proceeding and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334.
5 Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
6

7 C. First Priority Secured Obligations. The First Lien Lenders and the Agent, defined
8 below, allege as follows:

9 (1) Pursuant to that certain Credit Agreement dated as of November 21, 2005 (as
10 may have been amended from time to time, the "*First Lien Credit Agreement*") among Heritage
11 Land Company, LLC, The Rhodes Companies, LLC, and Rhodes Ranch General Partnership, as the
12 Borrowers, the Lenders Listed Therein as the Lenders (the "*First Lien Lenders*"), and Credit Suisse,
13 Cayman Islands Branch, as Administrative Agent, Collateral Agent, Syndication Agent, Sole
14 Bookrunner and Sole Lead Arranger (the "*Agent*") and together with all guarantees, subordination
15 agreements, intercreditor agreements, blocked account or deposit control agreements, indentures,
16 notes, mortgages, pledges, guarantees, instruments and any other agreements and documents
17 delivered pursuant thereto or in connection therewith (collectively, and as amended, restated,
18 supplemented or otherwise modified from time to time, the "*First Lien Loan Documents*"); the
19 Agent and the First Lien Lenders made certain senior loans, advances and other financial
20 accommodations to the Debtors to fund, among other things, the operations of the Debtors.
21
22

23 (2) Pursuant to the First Lien Loan Documents, the Debtors were, as of the
24 Petition Date, indebted to the Agent and the First Lien Lenders in the approximate amount of
25 \$307,000,000 exclusive of accrued but unpaid interest, costs, fees and expenses. For purposes of
26 this Order, the term "*First Priority Indebtedness*" shall mean and include, without duplication, any
27 and all amounts owing or outstanding under the First Lien Loan Documents (including, without
28

1 limitation, all Obligations as defined in the First Lien Loan Documents) or any other interest on, fees
2 and other costs, expenses and charges owing in respect of, such amounts (including, without
3 limitation, any reasonable attorneys', accountants', financial advisors' and other fees and expenses
4 that are chargeable or reimbursable under the First Lien Credit Agreement), and any and all
5 obligations and liabilities, contingent or otherwise, owed in respect of the Obligations outstanding
6 thereunder.
7

8 (3) Pursuant to certain security agreements, pledge agreements, blocked account
9 and deposit control agreements, mortgages, deeds of trust, assignments and other documents and
10 agreements (as amended, restated, supplemented or otherwise modified from time to time,
11 collectively, the "*First Lien Security Documents*"), and the other First Lien Loan Documents, the
12 Debtors granted to and/or for the benefit of the Agent and the First Lien Lenders first priority and
13 continuing pledges, liens and security interests (collectively, the "*First Priority Liens*") to secure the
14 First Priority Indebtedness and any guarantees thereof, in and upon the Debtors' property and assets,
15 whether real or personal, tangible or intangible and wherever located, whether now or hereafter
16 existing or acquired, including any state and federal tax refunds or rebates, and all of the proceeds,
17 products, offspring, rents and profits thereof, all as described in the First Lien Security Documents.
18 All collateral provided under any First Lien Loan Document, including that described in this
19 subparagraph C(3), that existed as of the Petition Date and all prepetition and, subject to section 552
20 of the Bankruptcy Code, postpetition proceeds, products, offspring, rents and profits thereof shall
21 hereafter be referred to as the "*Prepetition Collateral*."
22

24 (4) (a) The First Lien Loan Documents are valid and binding agreements of the
25 Debtors, (b) the Agent (on its own behalf and on behalf of the First Lien Lenders) properly perfected
26 their security interests and liens in and on the Prepetition Collateral, and (c) the First Priority Liens
27 (i) constitute valid, binding, enforceable and perfected first priority security interests and liens on the
28

1 Prepetition Collateral and (ii) are not subject to avoidance, reduction, disallowance, impairment or
2 subordination by the Debtors pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

3 (5) (a) The First Priority Indebtedness constitutes the legal, valid and binding
4 obligation of the Debtors, enforceable in accordance with its terms, (b) the Debtors have no
5 objection, offset, defense or counterclaim of any kind or nature to the First Priority Indebtedness and
6 (c) the First Priority Indebtedness, and any amounts previously paid to or on behalf of the Agent or
7 any First Lien Lender on account thereof or with respect thereto, are not subject to avoidance,
8 reduction, disallowance, impairment or subordination pursuant to the Bankruptcy Code or applicable
9 non-bankruptcy law.
10

11 During the Cash Collateral Period, the Debtors agree not to challenge any of the above
12 allegations of the First Lien Steering Committee or the Agent set forth in this Recital C.
13

14 D. Cash Collateral. The Debtors have requested the use "cash collateral", as defined by
15 section 363(a) of the Bankruptcy Code and including any and all prepetition and, subject to
16 section 552 of the Bankruptcy Code, postpetition proceeds of the Prepetition Collateral ("*Cash*
17 *Collateral*") in accordance with the Budget (as defined below), in order to continue the operation of
18 their businesses and their reorganization under chapter 11 of the Bankruptcy Code. Accordingly, the
19 relief granted is being provided with the consent of the First Lien Lenders for the continued
20 operation of the Debtors' businesses for the Cash Collateral Period (as defined below). Good,
21 adequate and sufficient cause has been shown to justify the granting of the relief provided herein and
22 the immediate entry of this Order.
23

24 E. Good Faith. Based upon the record before the Court, the terms of the use of the Cash
25 Collateral as provided in this Order have been negotiated at arms' length and in "good faith," as that
26 term is used in section 364(e) of the Bankruptcy Code, and are in the best interests of the Debtors,
27 their estates and creditors. The Agent and the First Lien Lenders are permitting the use of their Cash
28

1 Collateral in good faith.

2 F. No Secured Lender Objections. The Agent and the First Lien Lenders have
3 consented to the use of their Cash Collateral solely for the Cash Collateral Period and such consent
4 is expressly conditioned upon the consideration as provided in this Order. The adequate protection
5 provided herein and other benefits and privileges contained herein are consistent with and authorized
6 by the Bankruptcy Code and are necessary in order to obtain such consent or non-objection of such
7 parties.
8

9 G. Notice. Notice of the interim hearing to approve the Motion was delivered on or
10 before April 2, 2009 via United States mail, first class postage prepaid, to the following parties in
11 interest: (i) the United States Trustee for the District of Nevada (the "*U.S. Trustee*"); (ii) those
12 parties listed on the Consolidated List of Creditors Holding Largest Twenty Unsecured Claims
13 Against the Debtors, as identified in the Debtors' chapter 11 petitions; (iii) counsel to the Agent;
14 (iv) counsel to a steering committee of First Lien Lenders (the "*First Lien Steering Committee*"); and
15 (v) all parties requesting service papers pursuant to Bankruptcy Rule 2002; Given the nature of the
16 relief sought in the Motion, such notice constitutes sufficient and adequate notice of this Order
17 pursuant to Bankruptcy Rules 2002, 4001(b), (c) and (d) and 9014 and section 102(1) of the
18 Bankruptcy Code, as required by sections 363(b) and (c) of the Bankruptcy Code.
19

20
21 NOW, THEREFORE, IT IS HEREBY ORDERED, STIPULATED AND AGREED:

22 1. Relief Granted. The relief granted herein is granted on a interim basis subject to the
23 express provisions hereof. Any objections to the relief sought to the interim approval of the relief
24 granted herein that have not been previously resolved or withdrawn are hereby adjourned to the final
25 hearing.
26

27 2. Use of Cash Collateral. Except as otherwise set forth herein, for as long as the
28 Debtors comply with the terms and conditions of this Order, the Debtors are hereby authorized to

1 use Cash Collateral consistent with the budget (the "*Budget*") annexed hereto as Exhibit "A", subject
2 to a variance of 15%, *provided*, that the Agent and First Lien Lenders are granted adequate
3 protection as hereinafter set forth, and *provided, further*, that, absent the written consent of the First
4 Lien Steering Committee (in consultation with the Agent), the Debtors shall cease to be authorized
5 to use Cash Collateral pursuant to this Order upon the occurrence of the Cash Collateral
6 Termination Date.
7

8 3. Budgets and Covenants.

9 (a) The annexed Budget contains weekly forecasts covering the period beginning April
10 3, 2009 through the week ending April 17, 2009 (the "*Budget Period*"). The Debtors are hereby
11 authorized to use Cash Collateral in a manner that is entirely consistent with the Budget; provided,
12 however, that the Debtors shall be authorized to pay an aggregate of \$1,254,546 for Aspen at
13 Sawmill and Mohave Detention Center as per the Pinnacle Grading, LLC Cash Flow Projection
14 attached hereto as Exhibit B only to the extent that Pinnacle Grading revenue of \$1,198,403 is
15 received during the Budget Period. The rent otherwise payable to Mrs. Glynda Rhodes under the
16 Budget in the amount of \$2,500 shall be paid to the client trust account of the Debtors' bankruptcy
17 attorneys, Pachulski Stang Ziehl & Jones LLP pending further court order. The Debtors are
18 authorized, without further order of the Court, to make modifications to the Budget with the written
19 consent of the First Lien Steering Committee (in consultation with the Agent), which consent shall
20 be granted or withheld in the First Lien Steering Committee's sole discretion. The Debtors'
21 authorization to use Cash Collateral hereunder shall terminate upon the earlier to occur of (i) the
22 Cash Collateral Termination Date or (ii) expiration of the Budget Period unless the Debtors shall
23 have proposed and the First Lien Steering Committee, in its sole discretion (but in consultation with
24 the Agent), shall have approved, an extension of the Cash Collateral Period.
25
26

27 (b) The Debtors shall provide to the Agent and First Lien Steering Committee weekly
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1 variance reports by 5:00 p.m. (prevailing Pacific Time) on Tuesday of each week during the Budget
2 Period (or the next business day if such day is not a business day). Such variance reports shall (i)
3 include prior week actual and cumulative financial results compared to the budgeted amounts for
4 each such week and a detailed explanation of any variances and (ii) certify the Debtors' compliance
5 with the Budget.
6

7 4. Ordinary Course of Business. The Debtors shall only engage in transactions in
8 the Debtors' ordinary course of business during the Budget Period.

9 5. Adequate Protection. The Agent and the First Lien Lenders are hereby granted
10 the following as adequate protection:

11 (a) Adequate Protection Liens. As adequate protection of the respective interests of the
12 Agent and First Lien Lenders in the Prepetition Collateral, to the extent of any diminution in the
13 value of the Prepetition Collateral (including Cash Collateral) from and after the Petition Date,
14 whether as a result of the imposition of the automatic stay, or the use, sale or lease of the Prepetition
15 Collateral, including the use of the Cash Collateral, the Agent is hereby granted for its benefit and
16 the benefit of the First Lien Lenders, replacement liens (the "*Adequate Protection Liens*"), subject
17 only to such other liens, if any, as may be senior, under applicable law, to the First Priority Liens in
18 the relevant Collateral (as hereinafter defined), on all of the Debtors' rights, title and interest in, to
19 and under all personal and real property and other assets, whether now existing or at any time
20 hereafter acquired and regardless of where located, including, but not limited to, all contracts of sale,
21 pledged equity interests, tax refunds, general intangibles, copyrights, patents, trademarks, books and
22 records, customer lists, credit files, computer files, programs, printouts, other computer materials and
23 records related thereto, commercial tort claims, documents, letters of credit issued in favor of the
24 Debtors, excess proceeds returned to the Debtors from letter of credit beneficiaries, equipment,
25 fixtures, goods, inventory, machinery, pledged deposits, chattel paper, securities accounts, deposit
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1 accounts and all other demand, time, savings and cash management, passbook and similar accounts,
2 and all monies, securities, instruments and other investments deposited or required to be deposited in
3 such accounts, but excluding all claims for relief under chapter 5 of the Bankruptcy Code
4 (collectively, including the Prepetition Collateral, the "*Collateral*"). Except as provided in this
5 Order, the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien on the
6 Collateral by any order subsequently entered in the Chapter 11 Cases and shall be granted the
7 benefits of paragraph 6 hereof as applicable.

9 (b) Adequate Protection Claims. As additional adequate protection of the interests of the
10 Agent and the First Lien Lenders in the Prepetition Collateral, the Agent and the First Lien Lenders
11 are hereby granted allowed administrative priority claims under section 507(b) of the Bankruptcy
12 Code (the "*Adequate Protection Claims*") for any diminution in value of the Prepetition Collateral
13 (including Cash Collateral) from and after the Petition Date, whether as a result of the imposition of
14 the automatic stay, or the use, sale or lease of Prepetition Collateral, including the use of Cash
15 Collateral. The Adequate Protection Claims shall have priority over all administrative expenses of
16 the kind specified in, or ordered pursuant to, any provision of the Bankruptcy Code, including,
17 without limitation, those specified in, or ordered pursuant to, sections 105, 326, 328, 330, 503(b),
18 506(c), 507(a), 507(b), 546(c), 726 and 1114 of the Bankruptcy Code, or otherwise (whether
19 incurred in the Chapter 11 Cases or any conversion thereof to a case under chapter 7 of the
20 Bankruptcy Code or any other proceeding related hereto or thereto). Notwithstanding the foregoing,
21 the Adequate Protection Claims shall not have priority over the administrative claims incurred by the
22 Debtors as and to the extent contemplated in the Budget, the administrative claims of any third party
23 who received retainers from the Debtors to the extent of such retainers and a reasonable carveout for
24 professionals of a creditors committee (if and when appointed) for the purpose of investigating the
25 acknowledgements, admissions and confirmations of the Debtors contained herein. Solely for the
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1 Cash Collateral Period, the Adequate Protection Claims shall be subordinated to (i) the retainers
2 held, as of the Petition Date, by professionals to the Debtors that are retained pursuant to an order of
3 the Court and only to the extent of fees and expenses (a) incurred prior to a Cash Collateral
4 Termination Event and (b) allowed by further order of the Court; and (ii) the allowed administrative
5 claims of non-insider employees that provide actual services to the Debtors during the Cash
6 Collateral Period and allowed administrative claims of entities that provide services to the Debtors
7 (other than any affiliates of the Debtors or Jim Rhodes), in each case only to the extent provided for
8 in the Budget. Notwithstanding the foregoing, Spirit Underground shall have the benefit of the
9 foregoing sentence but only to the extent of \$30,000 for allowed administrative claims in respect of
10 services actually rendered during the Cash Collateral Period. In addition, any amounts due Pinnacle
11 Grading, LLC shall be subject to the provisions of paragraph 3 hereof.

12
13
14 (c) Fees and Expenses. As further adequate protection for the use of the Cash Collateral
15 during the Budget Period, the Debtors shall, no later than one business day after entry of this Order,
16 pay in cash the following to the professionals retained by the First Lien Steering Committee on
17 account of fees and expenses incurred and to be incurred on behalf of the First Lien Steering
18 Committee, without a right of setoff, recoupment, avoidance or disgorgement: (i) \$160,000 to
19 Winchester Carlisle Partners LLC; (ii) \$105,000 to Akin Gump Strauss Hauer & Feld LLP; and (iii)
20 \$10,000 to Kolesar & Leatham, in each case in accordance with wire instructions provided by the
21 applicable professional to the Debtors; the Debtors having acknowledged that wire instructions for
22 Akin Gump Strauss Hauer & Feld LLP have already been provided to the Debtors. The foregoing
23 payments shall be subject to recharacterization under Bankruptcy Code section 506(b). Nothing
24 herein shall prejudice the Agent or First Lien Steering Committee from seeking payment of
25 additional fees and expenses in connection with any further or final order regarding cash collateral or
26 otherwise and such rights are expressly reserved.
27
28

1 (d) Reporting Requirements. The Debtors shall furnish to the Agent and the First Lien
2 Steering Committee the following:

3 (I) Weekly Cash Flow Budget. On the third day of each calendar week (or, if
4 such Monday is not a business day, on the next succeeding business day), (i) a report setting forth
5 in reasonable detail any variances from the Weekly Cash Flow Budget on the basis of the actual
6 prior week, (ii) a report setting forth a list of all asset sales since the date of the last Weekly Cash
7 Flow Budget and the respective sales price, and (iii) a report of cumulative net cash proceeds
8 received by the Debtors with respect to asset sales since the date of the last such report.
9

10 (II) Cash Collateral Termination Event Notices. As soon as practicable, and in
11 any event within one business day after a responsible officer has actual knowledge of the existence
12 of any Cash Collateral Termination Event, the Debtors shall give the Agent and the First Lien
13 Steering Committee notice specifying the nature of the Cash Collateral Termination Even, which
14 notice, if given by telephone, shall be promptly confirmed in writing on the next business day.
15

16 (III) Provision of Specific Information. The Debtors shall furnish all of the
17 information set forth on Exhibit C hereto to the First Lien Steering Committee no later than Friday,
18 April 10, 2009 at 5:00 p.m. (prevailing Pacific Time). The First Lien Steering Committee is
19 authorized to share information and documents it receives from the Debtors with the Agent and the
20 First Lien Steering Committee shall share such information and documents with the Agent upon the
21 Agent's request.
22

23 (e) Disbursement Authority. During the Cash Collateral Period, all amounts paid by
24 the Debtors must be approved by two of the following (with checks drawn on any Debtor's bank
25 accounts to be signed by two of the following): (i) the Debtors' general counsel; (ii) the Debtors'
26 chief financial officer; and (iii) the Debtors' controller; provided, that neither Jim Rhodes nor any
27 relative or affiliate of Jim Rhodes shall serve in any of the foregoing capacities.
28

1 6. Perfection of Adequate Protection Liens. The Adequate Protection Liens granted
2 pursuant to this Order shall be deemed to be perfected automatically as of the Petition Date, without
3 the necessity of the filing of any UCC-1 financing statement, state or federal notice, mortgage or
4 other similar instrument or document in any state or public record or office and without the necessity
5 of taking possession or "control" (within the meaning of the Uniform Commercial Code) of any
6 Collateral, *provided, however*, that if the Agent shall, in its sole discretion, chooses to require the
7 execution of and/or file (as applicable) such mortgages, financing statements, notices of liens and
8 other similar instruments and documents, all such mortgages, financing statements, notices of liens
9 or other similar instruments and documents shall be deemed to have been executed, filed and/or
10 recorded *nunc pro tunc* at the time and on the date of the later of the Petition Date or the date upon
11 which the Debtors acquired the property subject to the mortgages, financing statements, notices of
12 liens and other similar instruments and documents at issue. Each and every federal, state and local
13 government agency or department is hereby directed to accept a copy of this Order as evidence of
14 the validity, enforceability and perfection as of the Petition Date of the liens granted or authorized
15 pursuant to this Order to or for the benefit of the Agent and the First Lien Lenders.
16

17 7. Limitation on Charging Expenses Against Collateral. During the Cash Collateral
18 Period defined herein, no administrative claims, including fees and expenses of professionals, shall
19 be assessed against or attributed to any of the Agent or First Lien Lenders with respect to their
20 interests in the Prepetition Collateral for the period of consensual use of Cash Collateral (the "*Cash*
21 *Collateral Period*") or any subsequent period in which the Debtors are permitted to use Cash
22 Collateral pursuant to the terms of this Order, as applicable, pursuant to the provisions of
23 section 506(c) of the Bankruptcy Code or otherwise by, through or on behalf of the Debtors, without
24 the prior written consent of the Agent and the First Lien Steering Committee, as applicable, and no
25 such consent shall be implied from any action, inaction or acquiescence by, either with or without
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1 notice to, the Agent or First Lien Steering Committee, or otherwise.

2 8. Priority of Obligations. Except as otherwise set forth herein, pursuant to Bankruptcy
3 Code section 507(b), all of the Debtors' obligations arising under this Order in respect of the First
4 Priority Indebtedness, the Prepetition Collateral, or the Adequate Protection Liens shall constitute
5 obligations of the Debtors with priority over any and all administrative expenses or other claims
6 arising or granted under Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a),
7 546(c) or 726.
8

9 9. Reservation of Rights of Prepetition Secured Parties. Notwithstanding anything
10 herein to the contrary, the entry of this Order is without prejudice to, and does not constitute a
11 waiver of, expressly or implicitly, or otherwise impair (a) any of the rights of any of the Agent or the
12 First Lien Lenders under the Bankruptcy Code or under non-bankruptcy law, including, without
13 limitation, the right of such parties to (i) request modification of the automatic stay of section 362 of
14 the Bankruptcy Code, (ii) request dismissal of any of the Chapter 11 Cases, conversion of any of the
15 Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, or appointment of a chapter 11
16 trustee or examiner (including with expanded powers);, or (iii) propose, subject to the provisions of
17 section 1121 of the Bankruptcy Code, a chapter 11 plan or plans for any of the Debtors; (b) any of
18 the rights of the Agent and the First Lien Lenders to seek modification of the grant of adequate
19 protection provided hereby so as to provide different or additional adequate protection at any time,
20 including prior to a Cash Collateral Termination Event, and nothing herein shall affect the rights of
21 any other party or entity to seek or oppose such modification of the grant of the adequate protection
22 provided hereby; or (c) any other rights, claims or privileges (whether legal, equitable or otherwise)
23 of any of the Agent or the First Lien Lenders. Nothing herein shall prejudice the rights of any party
24 to oppose any of the foregoing forms of relief (other than the Debtors with respect to paragraph C
25 herein) that may be sought by any of the Agent or the First Lien Lenders.
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10. Cash Collateral Termination.

(a) Notwithstanding anything herein or in the First Lien Financing Documents to the contrary, the Debtors shall no longer be authorized to use Cash Collateral pursuant to this Order, the First Lien Financing Documents, or otherwise, and consent to the use of Cash Collateral shall be terminated (the "*Cash Collateral Termination Date*") upon the earlier of (i) April 17, 2009 at 11:59 p.m. (prevailing Pacific Time) (unless such date is extended in the sole discretion of the First Lien Steering Committee (in consultation with the Agent)) and (ii) absent further order of the Court, the date that is one (1) business day after the delivery by the Agent or the First Lien Steering Committee of written notice to the Debtors of the occurrence of any of the following events (any event shall be referred to as a "*Cash Collateral Termination Event*"):

(I) non-compliance by the Debtors with any term, line item or provision in this Order or the Budget;

(II) the occurrence after the date hereof of a material adverse effect on any of the business, prospects, performance, assets, operations, condition (financial or otherwise), contingent and other liabilities or material agreements of the Debtors, taken as a whole;

(III) the incurrence by the Debtors of any expenses or the entry into any transaction not specifically contemplated by the Budget, absent the prior written consent of the First Lien Steering Committee, which consent shall be provided or withheld in the First Lien Steering Committee's sole discretion (in consultation with the Agent);

(IV) the entry of an order pursuant to Bankruptcy Code section 363 approving the sale of all or substantially all of the Debtors' assets (but only in the event that the First Lien Steering Committee (in consultation with the Agent) has not first consented to such sale), *provided, however*, that to the extent that the net proceeds of such sale are sufficient to satisfy all of the First Priority Indebtedness, then such sale shall not constitute a Cash Collateral Termination Event until the

1 closing of the sale;

2 (V) conversion or dismissal of the Chapter 11 Cases, *provided, however*, that if
3 an order dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or
4 otherwise is at any time entered, such order shall provide (in accordance with sections 105 and
5 349(b) of the Bankruptcy Code) that (i) the claims and liens granted pursuant to this Order to or for
6 the benefit of the Agent and the First Lien Lenders shall continue in full force and effect and shall
7 maintain their priorities as provided in and subject to the express limitations contained in this Order
8 until all obligations in respect thereof shall have been paid in full in cash and satisfied in the manner
9 provided in the First Lien Loan Documents (and that such claims and liens shall, notwithstanding
10 such dismissal, remain binding on all parties in interest); (ii) prior to dismissal, the applicable
11 Debtors shall deliver to the Agent and record, at the Debtors' cost, financing statements, mortgages
12 and other documentation evidencing perfected liens in the Collateral and (iii) this Court shall retain
13 jurisdiction, notwithstanding such dismissal, for the purposes of enforcing such claims and liens;
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15
16 (VI) entry of any order pursuant to sections 364(c)(1) and (d)(1) of the
17 Bankruptcy Code authorizing the Debtors to obtain credit that is payable on a senior priority, junior
18 priority or *pari passu* basis with the First Priority Indebtedness without the written consent of the
19 First Lien Steering Committee (in consultation with the Agent);
20

21 (VII) failure of the Debtors to make the payments specified in paragraph 5 to
22 the professionals for the First Lien Steering Committee by 5:00 p.m. (prevailing Pacific Time) on
23 April 9, 2009;

24 (VIII) failure of the Debtors to provide the information set forth on Exhibit C to
25 the First Lien Steering Committee by 5:00 p.m. (prevailing Pacific Time) on April 10, 2009;

26 (IX) failure of the Debtors to provide representatives of the First Lien Steering
27 Committee with reasonable access to the individuals set forth on Exhibit C as set forth herein; or
28

(X) this Order ceases to be in full force and effect.

(b) First Lien Steering Committee Access.

On April 8, 2009 at 2:30 pm (PST), the Debtors shall provide Winchester Carlyle Partners LLC ("Winchester") access to the Debtors' conference room at the corporate offices as workspace. Winchester personnel shall not initiate any substantive conversation with any of the Debtor's employees except as set forth herein. Commencing April 9, 2009 at 9:00 a.m. and ending 5:00 p.m. (PST) and continuing on April 10, April 13, April 14 and until 12:01 p.m. April 15, Winchester may commence employee interviews provided that no such interview shall exceed three (3) hours without the written consent of the Debtors or court order and a representative of the Debtors, other than Jim Rhodes, may attend such interviews. If Winchester requests additional documents or information other than those described on Exhibit C, the Debtors shall make a good faith effort to provide the documents or information on a timely basis. Winchester will vacate the Debtors' business premises by April 15, 2009 at 5:00 p.m. (PST).

(c) Prepetition Secured Party Remedies.

(1) Upon the occurrence of a Cash Collateral Termination Event, any the Agent or any First Lien Lender shall provide two (2) business days written notice (by facsimile, telecopy, electronic mail or otherwise) to the U.S. Trustee, counsel to the Debtors and counsel to any official committee prior to terminating the Debtors' use of cash collateral under this Order. Notwithstanding anything herein to the contrary, the First Lien Steering Committee retains the right, in its sole discretion (but in consultation with the Agent), to waive any such Cash Collateral Termination Event permanently or temporarily. The Debtors, the U.S. Trustee, and any official committee may seek within the two (2) business day notice period an expedited hearing before this Court solely for the purpose of considering whether, in fact, a Cash Collateral Termination Event

1 has occurred and is continuing. At the expiration of such two (2) business day period, the Agent
2 and any First Lien Lender shall be authorized, and the automatic stay provisions of section 362 of
3 the Bankruptcy Code are hereby vacated and modified to the extent necessary to permit them to
4 take whatever actions necessary to terminate the Debtors' use of Cash Collateral, including freezing
5 any deposit or securities accounts.
6

7 (II) The failure or delay by the Agent or any First Lien Lender to seek relief or
8 otherwise exercise its rights and remedies under this Order or any of the First Lien Loan
9 Documents shall not constitute a waiver of any of the rights of such parties hereunder, thereunder
10 or otherwise, and any single or partial exercise of such rights and remedies against any party or
11 Collateral shall not be construed to limit any further exercise of such rights and remedies against
12 any or all of the other party and/or Collateral. No holder of a lien that is subject to this Order or
13 granted by the Debtors as adequate protection shall be entitled to object on the basis of the
14 existence of any such lien to the exercise by the Agent or any First Lien Lender of their respective
15 rights and remedies hereunder, under the First Lien Loan Documents or under applicable law to
16 effect satisfaction of the First Priority Indebtedness or to receive any amounts or remittances due
17 hereunder or under the First Lien Loan Documents. Notwithstanding the occurrence of the Cash
18 Collateral Termination Date or anything herein to the contrary, all of the rights, remedies and
19 benefits and protections provided to the Agent, the First Lien Lenders and the First Lien Steering
20 Committee under this Order shall survive the Cash Collateral Termination Date.
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22

23 11. No Granting of Liens. Except as expressly provided in this Order, the Debtors shall
24 be enjoined and prohibited at any time during the Chapter 11 Cases from granting claims or liens in
25 the Prepetition Collateral or any portion thereof to any other parties pursuant to sections 364(d),
26 503(b) or 507(b) of the Bankruptcy Code or otherwise
27

28 12. Successors and Assigns. The provisions of this Order shall be binding upon and

1 inure to the benefit of each of the Agent, the First Lien Lenders, the First Lien Steering Committee
2 and Debtors and their respective successors and assigns (including any chapter 7 trustee or other
3 trustee or fiduciary hereafter appointed as a legal representative of any Debtor or with respect to the
4 property of the estates of any Debtor).

5
6 13. No Discharge. The obligations of the Debtors under this Order shall not be
7 discharged (and the Debtors waive the right to seek or obtain a discharge of such obligations under
8 section 1141 of the Bankruptcy Code or otherwise) until all obligations arising or payable under this
9 Order are indefeasibly paid in full in cash by the Debtors.

10
11 14. No Modification. Based upon the findings set forth in this Order, in the event that
12 any or all of the provisions of this Order are hereafter modified, amended or vacated by a subsequent
13 order of this or any other Court, no such modification, amendment or vacation shall affect the
14 validity, enforceability or priority of any lien or claim authorized or created hereby or thereby or any
15 First Priority Indebtedness incurred hereunder. Notwithstanding any such modification, amendment
16 or vacation, any First Priority Indebtedness incurred and any claim granted to the Agent or First Lien
17 Lenders hereunder arising prior to the effective date of such modification, amendment or vacation
18 shall be governed in all respects by the original provisions of this Order, and the Agent and First
19 Lien Lenders shall be entitled to all of the rights, remedies, privileges and benefits, including the
20 liens and priorities granted herein and therein, with respect to any such First Priority Indebtedness
21 and claims.

22
23 15. No Setoff. Notwithstanding anything herein to the contrary, this Order shall not
24 require the Agent or any First Lien Lender to turn over or release to any party any Cash Collateral in
25 its possession as of the Petition Date that is subject to setoff under the Bankruptcy Code; *provided*
26 that, until the occurrence of a Cash Collateral Termination Event, none of the or any First Lien
27 Lender shall exercise, or seek to exercise, any such setoff rights; *provided further* that all parties
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1 hereby reserve all of their rights as to whether any such setoff is valid and enforceable under the
2 Bankruptcy Code and applicable nonbankruptcy law.

3 16. This Order is hereby deemed effective immediately pursuant to Federal Bankruptcy
4 Rules of Procedure §6004(h).

5 17. The provisions of this Order, including the grant of claims and liens to or for the
6 benefit of the Agent and the First Lien Lenders, and any actions taken pursuant hereto shall survive
7 the entry of any order converting any of the Chapter 11 Cases to a case under chapter 7 of the
8 Bankruptcy Code.
9

10 18. A final hearing on the Debtors' authority to use Cash Collateral shall be held before
11 this Court on April 17, 2009. The Debtors shall prior to the final hearing make Paul Huygens and
12 Jim Rhodes available for deposition to be taken by the First Lien Steering Committee at a time and
13 place to be agreed upon. Notice of the final hearing to approve the Debtors' use of Cash Collateral
14 shall be delivered on or before April 9, 2009 via United States mail, first class postage prepaid, on
15 the following parties in interest: (i) the United States Trustee for the District of Nevada (the
16 "U.S. Trustee"); (ii) those parties listed on the Consolidated List of Creditors Holding Largest
17 Twenty-Five Unsecured Claims Against the Debtors, as identified in the Debtors' chapter 11
18 petitions; (iii) counsel to the Agent for the First Lien Creditors; (iv) counsel to the First Lien
19 Steering Committee; (v) all creditors of Debtor Pinnacle Grading LLC and (v) all parties requesting
20 service papers pursuant to Bankruptcy Rule 2002.
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19. This Order shall constitute findings of fact and conclusions of law.

DATED: April 9, 2009

APPROVED

By: /s/Brett Axelrod
 GREENBERG TRAUIG
 Brett Axelrod
 3773 Howard Hughes Parkway
 Suite 400 North
 Las Vegas, NV 89169
Counsel for Sagebrush Enterprises Inc.

APPROVED

By: [Signature]
 United States Trustee
 300 Las Vegas Blvd. S., Ste. 4300
 Las Vegas, NV 89101

APPROVED

By: /s/Ira S. Dizengoff
 AKIN GUMP STRAUSS
 HAUER & FELD LLP
 Ira S. Dizengoff (NY Bar No. 2565687)
 Philip C. Dublin (NY Bar No. 2959344)
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 One Bryant Park
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Counsel for the First Lien Steering Committee

APPROVED

By: /s/Ramon M. Naguiat
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 MEAGHER & FLOM LLP
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 300 S. Grand Ave., #3400
 Los Angeles, CA 90071
*Co-Counsel for Credit Suisse, Cayman
 Islands Branch, as Agent for First Lien
 Lenders*

Submitted by:

LARSON & STEPHENS

By: /s/ Zachariah Larson, Esq.
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 (702) 382-1170 (Telephone)
 (702) 382-1169
Proposed Attorney for Debtor

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PACHULSKI STANG ZIEHL & JONES LLP
 ATTORNEYS AT LAW
 LOS ANGELES, CALIFORNIA

EXHIBIT C

- Copies of information supporting park development & reimbursement agreement with county
- Copy of outstanding \$315,000 and \$1,342,000 park reimbursement invoices
- Outstanding bond list, expiration dates, annual maintenance fees, work remaining to complete for bond release, estimated cost and timing of such work.
- Detailed general ledger of all entities at 3/31/09.
- Bank statements and reconciliations at 3/31/09
- Payroll detail by employee for all entities (Pinnacle, Tuscany, etc).
- Check registers YTD thru 3/31/09
- Copies of Pinnacle agreements relative to current projects
- Copy of Option Agreement with Commerce re: Tuscany
- Copies of all agreements re: management & maintenance of Rhodes & Tuscany golf courses
- Schedule detailing due to/from related party entities.
- YTD Internal Financial Statements thru 3/31/09
- Fixed Asset Subledger at 3/31/09
- Detail of Fixed Asset Sales and Purchases for 2008 and YTD for 2009
- Land Development Budgets as of 3/31/09
- Lot Costing Calculations as of 3/31/09
- Plats for all communities
- Master House Cost Budgets for all active plans and access to contracts
- Copy of development agreements with city/county for Rhodes, Tuscany, Arizona Project
- Pricing sheets, option pricing, sales parameters for each community
- Marketing budgets
- Detail of land owned cross referenced to owner entity
- Model and office leases
- CC&Rs for each community and detail on HOA board structure with members and terms
- HOA budgets
- Copy of customer backlog at 3/31/09
- Detail on cycle times & building process by plan.
- Detail on outstanding /pending litigation
- Detail of current warranty claims and any pending Ch. 40 issues
- Schedule detailing any homes currently owned as a result of repurchase from homeowners
- Access to land development files for soils, environmental reports, etc.

Access to key managers to understand their operations including but not limited to (Paul Huygens, Jeff Barcy, Dan Tarwater, Joe Schramme, Brent Simpson, Jim Rhodes, Scott Prokopchuk, Jonathan Stafford, all construction personnel, Ryan Wells, Anil Melnick, Ryan Sourcie, HOA Contacts as necessary) – access pending continued settlement negotiations.